

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF BIG BEAR WASTEWATER,  
INC. FOR AN ADJUSTMENT OF RATES

)  
) Case No. 2009-00171

RESPONSE OF THE ATTORNEY GENERAL  
TO COMMISSION ORDER OF PROCEDURE  
DATED 22 JANUARY 2010

WITH

RESPONSE OF THE ATTORNEY GENERAL  
TO THE REPORT OF COMMISSION STAFF

On 22 January 2010, the Commission supplemented the procedural schedule in this proceeding. A supplemental mandate requires parties granted intervention "to identify any witness who may testify at any hearing and submit a list of specific objections to the application and a summary of the evidence and exhibits each may offer in support" at any hearing. The Attorney General notes that he does not plan to call or otherwise sponsor a witness at the evidentiary hearing.

With regard to his specific objections to the application, the Attorney General notes that Commission Staff has issued a report. Per the 8 January 2010 Order of procedure, parties may file responses to the report by no later than 28 January 2010. Through this pleading, the Attorney General combines his specific objections to the application with his response to the report of Commission Staff.

### TEST PERIOD IN THE APPLICATION

By an application filed on 28 April 2009, Big Bear Wastewater, Inc., (BBW) seeks an adjustment in rates through the Alternative Rate Filing procedure. In support of the application, BBW utilizes a test period consisting of the twelve months ending 31 December 2007. The Attorney General objects to the use of calendar year 2007 as the test year; accordingly, the Attorney General also objects to the "adjusted" test period in the application including all of the individual adjustments.

The report of Commission Staff utilizes calendar year 2008 as the test period. The utilization of a more recent twelve months appears appropriate. Nonetheless, the change of the period of time utilized for the test period is a fundamental change in the application (and functions as an amendment of the application). The Attorney General anticipates cross-examining witnesses on issues relating to information from calendar year 2008 utilized to develop the report of Commission Staff as well as seeking information regarding known and measurable changes to the test period for the report.

### ALLEGED SUBSIDIZATION OF BBW PER THE APPLICATION

BWW asserts that it has been subsidized by "its resort operations." The Attorney General is without knowledge and information sufficient to form a belief as to the truth of this statement. Therefore, he contests it.

### CUSTOMER COUNT UTILIZED FOR DETERMINING REVENUE AND DEVELOPMENT OF TEST PERIOD REVENUE AMOUNT PER THE APPLICATION AND THE REPORT OF COMMISSION STAFF

The customer count information utilized in the application is from calendar year 2007. More than 24 months have passed. BBW, in Reference Note D of the application,

notes that sludge hauling expense has increased due to “increased demand from its condo expansion.” The Attorney General anticipates cross-examining witnesses on the issue of expansion and the appropriate customer count for rate-making. Further, in view of evidence in the record concerning the relationship between the BBW and its parent, the Attorney General anticipates cross-examining witnesses on the issue of whether the development of the test year revenue amount includes a fair, equitable total number of customers or customer count (taking into consideration the utilization of the wastewater plant).

#### **ROUTINE MAINTENANCE FEES EXPENSE PER THE APPLICATION**

Without waiving his general objection to the adjusted test period per the application, the Attorney General objects to the Routine Maintenance Fees Expense (Reference Note G) contained in the application and objects to BWW’s utilization of the four-utility summary schedule in the footnote because BWW fails to provide an adequate foundation of its use. BWW does not explain why the schedule excludes the results of the remaining sewer utilities subject to the regulation of the Commission, and BWW fails to demonstrate that the fee amounts identified in its schedule fairly and reliably provide a basis for use in this proceeding.

#### **REPORT OF COMMISSION STAFF**

As noted previously, the Attorney General questions whether the pro forma operating revenue amount in the report of Commission Staff is based upon a fair, equitable consideration of the utilization of the wastewater treatment plant. By reference to the Amended Staff Report in Case Number 1999-00114 (13 January 2000,

Adjustment A), the Attorney General notes that the development of the pro forma revenue amount should include consideration of “costing” or otherwise assigning responsibility for funding the operations of the wastewater treatment plant to opportunities to utilize the plant (and that the use of the residential equivalency factor accepted in Case Number 1999-00114 is inappropriate for further use because it results in an unfair exclusion of an appropriate charge).

The Attorney General accepts the report of Commission Staff’s recommendation of a \$3,600 owner/manager fee (Adjustment B). The Attorney General does not contest the report of Commission Staff’s recommendations regarding collection system labor, materials and expenses and sludge hauling expense (Adjustments C and D). The Attorney General accepts the report of Commission Staff’s recommendation for BWW’s utility cost- water cost expense (Adjustment E).

With regard to chemical expenses (Adjustment F), the report of Commission Staff does not adequately establish that the amount claimed is supported by sufficient evidence (in terms of invoices, etc.), and it does not demonstrate that the expense amount is reflective of or otherwise consistent with an expense amount that corresponds to reasonable, normal operations of the utility. Therefore, the Attorney General contests this recommendation.

With regard to routine maintenance fees expense (Adjustment G), the report of Commission Staff relies upon a single bid. The report does not explain why reliance upon a single bid is justified, and the recommendation does not adequately establish that the amount claimed is reflective of or otherwise consistent with an expense amount

that corresponds to reasonable, normal operations of the utility. Therefore, the Attorney General contests this recommendation.

For maintenance of collection sewer system expense (Adjustment H), the Attorney General agrees with the recommendation of Commission Staff. Likewise, the Attorney General agrees with the recommendation of Commission Staff for administrative and general salaries (Adjustment I).

The recommendation of Commission Staff for office supplies and expense (Adjustment J) is based upon the annual report of BWW for calendar year 2008. To the extent that Staff has simply pulled the number from the BWW report and does not affirmatively state that it has reviewed the composition of the elements of the expense amount and determined the spending to be reasonably incurred for providing service and reflective or normal utility operations, the Attorney General objects to the recommendation because there is no demonstration that the evidence is sufficient for BWW to meet its burden to recover these costs through rates.

With regard to chemical testing (Adjustment K), the Attorney General does not contest the recommendation of Commission Staff. With regard to insurance (Adjustment L), the Attorney General accepts the Staff's recommendation with regard to the expense amount for annual liability insurance; however, the Attorney General questions the recommendation regarding workers compensation insurance because he is uncertain as to whether the total pro forma labor costs (which serves as the basis for developing this expense amount) has been established as reliable. In passing, the Attorney General notes that the burden of proof is upon BWW rather than the Attorney

General. On this point, it is not the burden of the Attorney General to prove that this or any expense amount is unreliable.

The Attorney General accepts the recommendations of Commission Staff for the employee pensions and benefits expense pro forma amount (Adjustment M) and the office rent amount (Adjustment N). With regard to the recommendation of Commission Staff for depreciation expense (Adjustment O), the Attorney General agrees with the recommendation.

For amortization expense (Adjustment P), the Attorney General agrees with the report of Commission Staff; however, the Attorney General recognizes that BWW may request an increase in the amount by claiming that additional funds have been spent for presenting this rate case. Without conceding any argument or waiving any challenge to any increase in rate case expense that BWW may propose, the Attorney General notes that BWW is entitled to a reasonable amount for the pursuit of an increase in rates. Therefore, the Attorney General's agreement with Commission Staff for amortization expense is an interim or otherwise preliminary recommendation.

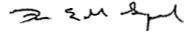
For interest expense (Adjustment Q), the Attorney General agrees with the recommendation of Commission Staff and further states that BWW is procedurally barred from re-litigating this issue because the matter was conclusively determined in Case No. 1999-00114.

With regard to rate-design, the Attorney General does not object to the utilization of a phased or stepped approach. Mitigation of rate shock is a legitimate regulatory goal, and a phased or stepped approach is a permissible regulatory tool.

WHEREFORE, the Attorney General submits this Response.

Respectfully submitted,

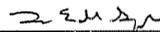
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*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of this pleading were served and filed by hand delivery to Jeff Derouren, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct of the same, first class postage prepaid, Deborah T. Eversole, Stoll Keenon Ogden PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, and Robert C. Moore, Hazelrigg & Cox, LLP, P. O. Box 676, Frankfort, Kentucky 40602-0606, all on this 28<sup>th</sup> day of January, 2010.



Assistant Attorney General